

## *Preventing Conflicts of Interest*

*Recommended Procedures for establishing a conflict of interest database.*

*Minimum process necessary to identify prospective clients whose interest may be adverse should their case/matter be accepted by the firm.*

### **I. Establish and Maintain a Conflict Database**

A. Develop and maintain a computer database into which data is entered for use in identifying possible conflicts situations. All appropriate parties and counsel in new matters (or new parties/counsel in existing matters) are to be checked for conflicts by searching this database, which upon inquiry can generate a written report of the results. All conflict reports showing *possible conflicts* are to be appended to the Firms' New File Memo prior to final acceptance of the representation by the firm.

B. The following information for *every* matter handled by the firm should be entered in the conflict database:

1. Identification of the following individuals and entities:
  - a) Client(s), including maiden name or other legal names used, and both the insured client and the insurer in if insurance defense cases;
  - b) Adverse parties, including parties who are not technically adverse at present but are likely to become adverse to our client in the future;
  - c) Adverse counsel, including individual attorneys and their firm(s);
  - d) Co-parties;
  - e) Co-parties' counsel; and
  - f) Experts
  - g) Major witnesses
2. A description of the firm's participation in the matter:
  - a) Contract;
  - b) Defense;
  - c) Tax or Estate;
  - d) Prosecution;
  - e) Potential claim;
  - f) Transactional
  - g) Corporation
  - h) Expert/Consultant; and
  - i) Other

3. The date the file was opened;
4. The date the file was closed;
5. The name of the partner responsible for the matter;
6. The name(s) of the “work attorney(s)” on the matter.
7. Case name [as later assigned]
8. Case number [as later assigned]

C. Preliminary conflict checks for prospective new clients and matters are to be run any time before a potential new matter is accepted.

C. Checking for conflicts in new matters: The information entered into the conflict database for new matter is obtained when the partner(s) seeking to accept new work submits a completed new file memo.

The attorney or secretary completing the New File Memo must do so carefully, paying particular attention to providing the correctly spelled names of all clients, adverse parties and their counsel, and co-parties and their counsel. Accurate role designations are also critical to obtaining accurate conflict reports. For example, if a party is mistakenly characterized as a co-party when in fact it is adverse, a subsequent conflict report would fail to note any potential conflict if that party later retained the firm as its counsel. The conflict database is only as accurate as the data entered into it.

While responsibility for initial preparation of new file memos may be delegated to qualified support staff, ultimate responsibility for confirming the accuracy of the information provided rests with the partner responsible for the matter.

All new matters in which the firm is to represent more than one party must be approved in advance by the Managing Partner. No multiple representations may be accepted without the informed written consent of each client.

## **II. Resolving Potential Conflicts**

A. New matters: If any actual or potential conflicts are identified, requiring disclosure, informed consent, ethical barriers or other prophylactic actions, the case must be submitted to the Managing Partner for approval.

B. Existing matters: If potential conflict situations arise in existing matters, where appropriate those affected may need to be notified.

C. All matters: The Managing Partner should be consulted for advice on resolving potential conflicts and for assistance in drafting disclosure letters and consent forms.

D. Updating the conflict database: During the life of a matter, the parties and counsel frequently change. It is therefore critical to continually update the conflict database with new parties and their counsel.

All attorneys are responsible for reporting whenever a new party and/or counsel enters a matter, so a conflict check can be run and the information added to the conflict database.

To help remind attorneys to update the conflict database, conflict reminders should be sent to the responsible partner in all matters at the following stages:

1. The filing of an amended complaint or cross-complaint.
2. The filing of a substitution of counsel;
3. Every six months.

E. Declined Engagement Conflicts: When the firm declines an engagement, it may have received confidential information that would prevent it from representing an adverse party in related matters. For example, the firm interviewed a potential client seeking a divorce, but subsequently declined representation. The firm may have received confidential information about the matter during the course of the initial interview, thus, the firm would be conflicted out of later representing the other spouse.

Updating our conflict database with declined clients will help to identify such potential conflicts. Thus, at the time the firm declines representation of a matter, the information about the declined client must be entered into the firm's conflict of interest database.

E. Unrepresented persons in existing matters: When meeting or talking with unrepresented persons in existing matters being handled by the firm, always assure that they understand the firm is not representing their interests and that they cannot rely upon our advice or actions. Confirm such statements in writing as appropriate.

### **III. Avoiding Disqualification Based on Hiring;**

A. Background: Unless proper steps are taken, a firm can be disqualified from a matter because a new employee previously represented a party in a matter in which that party is adverse to the firm's client. It is important to note that the disqualification may stem from a direct, indirect or imputed conflict. The following procedures are therefore necessary:

1. To identify legal matters which a prospective employee worked on before coming to the firm.
2. To identify whether clients of the prospect's firm are adverse to the firm's clients.
3. To determine the potential for conflict regarding that firm's present and past clients.
4. To obtain pre-employment consent from affected clients if necessary.
5. To implement screening procedures as appropriate.

**WARNING: The partner hiring an attorney/legal assistant/law clerk/secretary, or other employee is responsible for seeing that these procedures are followed *before* any job offer is extended, or that offers are made expressly contingent upon following these procedures.**

B. New Hire Conflict Checking Procedure:

1. Conflict of Interest Form: Before any offer of employment is made for any position with the firm, the candidate must be given the appropriate form by the person doing the hiring. The candidate must also be admonished not to reveal any confidential client information while completing the form.
2. Checking for Conflicts: The completed form should be returned immediately to have a check run in the conflict database. The partner then reviews the information and sees that necessary follow-up with appropriate partners is accomplished, if required.
3. Obtaining Waivers: If potential conflicts are discovered (and the firm nevertheless wishes to extend an offer) the offer should be contingent on the firm obtaining written

consent from the affected parties. Such consents should be obtained by the partner doing the hiring, with copies of the signed consents attached to the applicant's personnel file after acceptance.

4. Need to Know: Although not recognized by Florida Courts, ethical barriers may prevent even the appearance of a conflict. To construct a barrier, a memorandum should be sent to all personnel. The memo should advise all personnel that the person in question is to remain uninvolved in and isolated from the matter, will be denied access to any documents in the file, and will not have access to the case's computer directory, if applicable. The memo should further instruct all personnel to refrain from discussing the case in the person's presence. Warning labels should be affixed to the case files involved, identifying the employee who is not allowed access. Additionally, computer access should be restricted on the network prohibiting the employee's access to all case related documents.

#### **IV. Positional Conflicts:**

A positional or issue conflict is a situation where the firm is called upon to take opposing positions on issues for different clients. Position conflicts are of particular concern in the areas of corporate law, intellectual property, insurance coverage and professional liability defense.

If a member of the firm becomes aware of a potential positional or issue conflict, he or she should consult with the other affected partner(s) and the Managing Partner.

#### **V. Business Conflicts**

Business conflicts are situations where, because of business relationships with certain clients, the firm's ability to represent other clients may be limited. For example, an important client may expect the firm's undivided attention in cases where other clients of the firm are also defendants. By meeting the expectations of one client the firm may risk its relationships with other clients. If a member of the firm becomes aware of a business conflict, he or she should immediately bring it to the attention of the firm's Managing Partner and the other involved partners.

***Only to be given to an attorney once the decision has been made to hire!***

# Pre-Employment Conflict of Interest Form

To avoid potential conflicts of interest within our practice, we ask that you carefully complete this form to the best of your ability. Attach additional pages if necessary. An internal conflict check will be generated from your information to determine if your affiliation conflicts with clients in our practice. If you have any questions about this form or any the information requested, please let us know.

**Warning:** *DO NOT Disclose Any Confidential Client Information in Completing This Form*

1. Full name (including maiden name or other legal names you may have used):

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2. Position sought with the firm: \_\_\_\_\_

3. Identify all employers (including law firms, private or governmental legal departments, and courts,) positions (including attorney, judicial extern or inter, summer law clerk, legal assistant, paralegal or legal secretary), and dates employed for every position you have held in a capacity of providing legal services. (Attach a copy of your resume or additional sheets of paper):

4. If in the interest of the client, identify the clients you have served in the last five years, describing generally the nature of the work, **but without disclosing any confidential information:**

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5. If a partner or Of Counsel, list the major clients of your former firm(s): \_\_\_\_\_

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6. Are you aware of any clients of your former firm(s) who have had dealing with or litigation involving this firm? If so, identify them: \_\_\_\_\_

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7. If you were a judicial clerk in the last five years, identify the matters in which you were personally and substantially involved in which this firm acted as counsel for one of the parties: \_\_\_\_\_

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8. Identify each directorship, general partnership, and office you hold with any commercial or nonprofit entity, including the name of the entity, its business, whether it is publicly held, the directors and officers, errors and omissions insurance it carries, and whether you have an investment interest in the entity:

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9. Identify any close relatives (i.e., spouse, parent, child, or sibling) or close associates who either practice law or are employed by a law firm or legal department and indicate whether you live with any of these relatives or close associates:

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10. Are you or any of your relatives (or their employers) involved in litigation where this firm is representing another party? If so, describe

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For a full discussion of the ethical considerations in conflicts, see Restatement Third, The Law Governing Lawyers §121. See also Rules Regulating The Florida Bar. Rule 4-1.7 Conflict Of Interest: General Rule and Comment. You may also contact the Ethics Hotline at 800-235-8619.